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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,506	02/04/2004	Yoshihiko Iijima	248528US0	1755
22850	7590	12/12/2005	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			NGUYEN, SON T	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 12/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/770,506

Applicant(s)

IIJIMA ET AL.

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) 14-17 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-13 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/4/04.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. In response to a restriction requirement mailed 2/28/05, Applicants elected group I, claims 1-13. Claims 14-17 have been withdrawn from consideration due to the claims belonging to non-elected groups.

Applicants have traversed the restriction requirement based on the fact that Applicants believed that the Examiner has not provided sufficient reason or examples to support why the groups are patentably distinct. As stated in the restriction requirement, the groups are patentably distinct as given reasons therein. For example, group I is distinguishable from group II in the fact that group I can be made by another and materially different process such as the cinnamic acid being in powdered form and does not need to be mixed with an aqueous solution and a dispersing medium. Clearly, this demonstrates that group I is made by a different process with different material, i.e. no requirement of an aqueous medium and a dispersing medium. For groups II,III,IV reasons, see the restriction requirement. It is believe that the restriction requirement is proper and sufficient reason has been provided, thus, the requirement is still deemed proper and is therefore made FINAL. Claims 14-17 have been withdrawn from consideration.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 9 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

Art Unit: 3643

regards as the invention. Regarding claim 9, line 2, "said solubilizer" lacks prior antecedent basis.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1-5,9-10** are rejected under 35 U.S.C. 102(b) as being anticipated by Ferguson et al. (US 3157964).

For claim 1, Ferguson et al. teach a plant growth regulator containing cinnamic acid (col. 3, line 25).

For claim 2, Ferguson et al. teach the cinnamic acid being dispersed in an aqueous medium (col. 1, line 72, col. 7, line 66 and throughout patent).

For claims 3-5, Ferguson et al. teach carboxymethylcellulose as a dispersant in the composition (col. 4, line 70).

For claims 9 & 10, Ferguson et al. teach hydroxides (col. 5, lines 5-10).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3643

7. **Claims 6-8,11-13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferguson et al. (as above).

For claim 6, Ferguson et al. are silent about the cinnamic acid being dissolved in the aqueous medium in a concentration exceeding maximum solubility thereof in water. It would have been obvious to one having ordinary skill in the art at the time the invention was made to dissolve the cinnamic acid in the composition of Ferguson et al. in a concentration exceeding maximum solubility thereof in water, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable value/ranges for the concentration of cinnamic acid in the composition until the desired effect is achieved involves only routine skill in the art.

For claims 7 & 8, Ferguson et al. teach hydroxides (col. 5, lines 5-10).

For claim 11, Ferguson et al. are silent about wherein a concentration of the cinnamic acid being 25 weight % or less. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a concentration of the cinnamic acid being 25 weight % or less in the composition of Ferguson et al., since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable value/ranges for the concentration of cinnamic acid in the composition until the desired effect is achieved involves only routine skill in the art.

For claims 12 & 13, Ferguson et al. teach applying the composition on plant such as bushes, flowers, shrubs, etc. (col. 1, lines 65-70) but they do not specifically states the types. It would have been obvious to one having ordinary skill in the art at the time


Art Unit: 3643

the invention was made to employ the composition of Ferguson et al. on poinsettia, geranium, cabbage, carrot, etc., depending on the user's preference based on the desired need to regulate growth of the chosen type of plant.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn